



Kariuki v Republic & another (Miscellaneous Criminal Appeal E033 of 2023) [2025] KEHC 14198 (KLR) (7 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14198 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CRIMINAL APPEAL E033 OF 2023**

EM MURIITHI, J

OCTOBER 7, 2025

BETWEEN

JOSEPH GICHIMU KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

AND

JOHN MUNGAI MUNYI APPLICANT

RULING

1. The applicant/respondent filed a Preliminary Objection dated 7th September, 2023 to the hearing of the entire application dated 24th August, 2023 and put forth the following grounds:
 1. The said application is incompetent in law and offends provisions of Articles 157 and 159 of *the Constitution* of Kenya 2010 as the Applicant has not locus standi to either prosecute criminal matters on behalf of the State or adjudicate criminal matters on behalf of the Judiciary by moving the Honourable Court on their behalf.
 2. The Honourable Court is functus officio as it has already pronounced itself on the matter.
 3. The Application is an abuse of the court process.

Applicant submissions

2. On locus standi they submit that the participation of the complainant/victim in a criminal case is well settled under The *Victim Protection Act* and numerous decided cases. The applicant submit that the Court of Appeal rendered its judgment on the issue in Joseph Lendrix Waswa v Republic where the Court emphasized the provision of The *Victim Protection Act* and reiterated the importance of the



victims' active participation in a criminal trial, not as a passive observer, but as a rights holder with valid interests in the proceedings and the outcome of the Case.

3. The applicant rights as a victim, were gravely affected by the exparte Orders of 15th August 2023. His legitimate interests and views were not considered contrary to the law.
4. On whether the court was functus officio the applicant submits that the court issued the ex parte orders without granting them a right to be heard.

Accused submissions

5. On locus standi, the accused submits that that the applicant herein served the D.P.P with the proceedings herein prior to securing the orders in issue but the D.P.P chose not to object to the initial application. It would be tantamount to usurping the powers conferred by *the constitution* to the D.P.P to hold that the instant applicant has the power to take over the proceedings herein and discharge the duties that are a reserve of the D.P.P.
6. On functus officio, the accused submits that the D.P.P was duly served with the interim orders but chose not to oppose the initial application culminating in the issuance of the orders in issue and the matter concluded. Hence, re-opening this matter will be a waste of precious judicial time and resources.

Issues

7. Whether the Applicant has locus standi.
8. Whether the Court is functus officio.

Analysis

9. The Applicant filed the Application dated 24th August, 2023 seeking among other orders, the setting aside of the exparte Orders of 15th August 2023, which stayed the proceedings in Kerugoya Criminal Case No. E314 of 2021 R –v John Mungai Munyi where the Applicant herein is the Complainant and therefore directly affected by those orders. Further, the exparte order directed that the Criminal case should start denovo before a different Court. Again, this order is prejudicial to the Complainant/ Applicant herein.
10. The Respondent filed the Notice of Preliminary Objection dated 7th October, 2023 on the two grounds; that the Applicant has no locus standi and the Honourable Court is functus officio.

Whether the Applicant has locus standi

11. The respondent/accused case is that the said application is incompetent in law and offends provisions of Articles 157 and 159 of *the Constitution* of Kenya 2010 as the Applicant has not locus standi to either prosecute criminal matters on behalf of the State or adjudicate criminal matters on behalf of the Judiciary by moving the Honourable Court on their behalf.
12. The applicant lacks locus standi to institute and prosecute the matter as the same is being conducted by the prosecution. By analogy of the civil procedure position of a private person and the Attorney General, the Court in the matter of Khelef Khalifa EL-Busaidy v. Commissioner of Lands & 2 others [2002] eKLR (Onyancha J.) while canvassing the issue of locus standi of a private person to litigate public interest said:

“I understand the English authorities to state it as follows:- That for an individual to have a locus standi, he must have an interest either vested or contingent in the subject matter



before the court, which interest must be a legal one. Such interest must be above that of other members of the public in general. The position is well stated in the case of *Gouriet v Union of Post Office Workers and Others* [1977] All ER 70 at page 80 as follows:-

“.....It can be properly said to be a fundamental principle of English law that private rights can be asserted by individuals, but, that public rights can only be asserted by the Attorney-General as representing the public. In terms of constitutional law, the rights of the public are vested in the Crown, and the Attorney- General enforces them as an officer of the Crown. And just as Attorney-General has in general no power to interfere with the assertion of private rights, so in general no private person has a right of representing the public in the assertion of public rights. If he tries to do so his action can be struck out.”

13. The office of Director of Public Prosecutions is established by Article 157 of *the Constitution*. The functions are to initiate prosecutions, take over prosecutions initiated by other persons/authorities and, in some cases, discontinue prosecutions. In performing these functions, the DPP has the responsibility to ensure *the Constitution* and the values therein are observed.
14. The applicant/ complainant argues that he has a right to active participation in the criminal trial. Section 4(2) (b) of The *Victim Protection Act* provides that every victim is, as far as possible, given an opportunity to be heard and to respond before any decision affecting him or her is taken. Further, Section 9 (2) of The *Victim Protection Act* establishes the right of the victim to present their views at the different stages of trial where their interests are concerned.
15. As observed in the Kenya Judiciary’s booklet *Indigenous Jurisprudence - A Synopsis of Selected Cases of the Supreme Court of Kenya*, the Supreme Court in *Joseph Lendrix Waswa v. Republic*, Petition No. 23 of 2019; [2020] eKLR observed that “a victim cannot and does not wear the hat of a secondary prosecutor” and gave the following guiding principles to assist the trial Court when considering an application by a victim or his legal representative to participate in a trial and the manner and extent of the participation in *Joseph Lendrix Waswa v Republic* [2020] eKLR:
 - a. The applicant must be a direct victim or such victim’s legal representative in the case being tried by the Court;
 - b. The Court should examine each case according to its special nature to determine if participation is appropriate, at the stage participation is applied for;
 - c. The trial Judge must be satisfied that granting the victim participatory rights shall not occasion an undue delay in the proceedings;
 - d. The victim’s presentation should be strictly limited to “the views and concerns” of the victim in the matter granted participation;
 - e. Victim participation must not be prejudicial to or inconsistent with the rights of the accused;
 - f. The trial Judge may allow the victim or his legal representative to pose questions to a witness or expert who is giving evidence before the Court that have not been posed by the prosecutor;
 - g. The Judge has control over the right to ask questions and should ensure that neither the victim nor the accused are not subjected to unsuitable treatment or questions that are irrelevant to the trial;
 - h. The trial Court should ensure that the victim or the victim’s legal representative understands that prosecutorial duties remain solely with the DPP;



- i. While the victim's views and concerns may be persuasive; and no doubt in the public interest that they are acknowledged, these views and concerns are not to be equated with the public interest;
 - j. The Court may hold proceedings in camera where necessary to protect the privacy of the victim;
 - k. While the Court has a duty to consider the victim's views and concerns, the Court has no obligation to follow the victim's preference of punishment.
16. The participation of the applicant in the trial should not infringe on the rights of the accused to fair trial and the applicant has no locus standi in this matter. It is the DPP who has the State's prosecutorial mandate, which is relevant in this case. With respect, the Victim shall be accorded rights of participation during the trial which has not been stopped but only directed to be restarted before a court differently constituted.

Whether the Court is functus officio

17. The applicant/complainant submits that the ex parte orders are candidate for setting aside and the matter be heard on its merit and the Court is not functus officio. The respondent/accused submits that the D.P.P was duly served with the interim orders but chose not to oppose the initial application culminating in the issuance of the orders in issue and the matter concluded.
18. The application came up for hearing on 15th August, 2023 and the DPP did not oppose it. The minute of the Court (Muya, J.) was that-
- i. "The application dated 7th August 2023 which was duly served on the Respondents and there being no opposition it is allowed as prayed in terms of prayers 2, 3, 4 and 5."
19. The application has been dealt with by this court. The Court cannot be asked to deal with the application twice over. A formal order of the Court was extracted in the said terms, as follows:

"Order

This matter coming up for direction under vacation rules before Hon. Justice M. Muya, in the presence of Omenya for the applicant virtually, N/A for the respondent;

It Is Hereby Ordered;

1. That pending the inter-parties hearing of this application, the stay of proceedings in Kerugoya Criminal Case no. 314 of 2021 be granted.
2. That there be a stay of proceedings in Kerugoya Criminal Case no. 314 of 2021 pending the hearing and determination of the current application.
3. That there be a stay of proceedings in Kerugoya Criminal Case no. 314 of 2021 pending the hearing and determination of Kerugoya MC.ELC Cause no. E083 of 2021.
4. That Kerugoya Criminal Case no. 314 of 2021 be heard de nove before a different court.

Given Under my hand and seal of The Honourable Court This 15th August 2023

Hon. Martin Muya



Judge.”

20. If aggrieved, the party should have preferred an appeal to the Court of Appeal.

Orders

21. Accordingly, the Court finds that it is functus officio and the applicant has no locus standi, and the Preliminary Objection is upheld.

22. File closed.

Orders accordingly.

DATED AND DELIVERED THIS 7TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Njuguna for the Applicant.

Mr. Mumo for Mr. M. Kimani for the Respondent.

Mr. Mamba for the DPP.

